Amended Petition

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P. No. 2527/2004

PETITIONER Deepak Kumar Soni aged 24 years S/o Shri Lekhram Soni R/O Gondpara Bilaspur (Chhattisgarh)

VERSUS

RESPONDENTS

1. State of Chhattisgarh through Secretary Health and Family Welfare Deptt. D.K. Bhawan, Raipur (C.G.)
2. Director, Medical Education Department Chhattisgarh D.K. Bhawan, Raipur (C.G.)
3. Adhistha, Medical College, Raipur (C.G.)
4. Rajesh Agrawal C/O Dean Pt. Jawaharlal Nehru Medical College, Raipur (Chhattisgarh)

Filed on 30/9/04 by Shri Rajneesh Sharma Advocate

COPY 30/9/04 Clerk to A.G. Bilaspur

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT OF CERTIORARI, MANDAMUS AND OR PROHIBITION AND OR ANY OTHER WRIT/ORDER/DIRECTION ON THE SAME NATURE IN THE CIRCUMSTANCES OF THE CASE

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2527 of 2004

Deepak Kumar Soni

- Versus -

State of Chhattisgarh & others

POST FOR ORDER ON 18th OCTOBER, 2004

Sd/-
L.C. Bhadoo
Judge
15th.10.2004

(91)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

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Deepak Kumar Soni

- Versus -

State of Chhattisgarh & others

Present: -

Mr. Kanak Tiwari with Shri Prateek Sharma,
Advocates: For the petitioner.

Mr. Prashant Mishra, Additional Advocate General with Mr. N. K. Agrawal, Deputy Advocate General: For the State/respondents 1 to 3.

None for respondent No.4.

O R D E R

(Passed on 18th October, 2004)

L.C. BHADOO, J.

By this writ petition filed under Article 226/227 of the Constitution of India the petitioner has questioned the correctness and legality of the letter (Annexure-P/1) dated 9-8-2004 issued by the Dean, Medical College, Raipur, whereby the Dean has intimated the petitioner that he cannot be admitted in the first year of M.B.B.S. Course against the disabled/handicapped class quota.

(2) Brief facts leading to filing of this writ petition are that the petitioner herein appeared in the Pre-Medical Test (for short P.M.T.) Examination, 2004 vide roll No.4753311 from the Centre at Durga Mahavidyalaya, Raipur as an O.B.C. category candidate. As per the petitioner's petition he secured 235th position in the merit list, and he also secured first position in the disabled/handicapped class. Accordingly, the petitioner was intimated to appear for counseling. In response to the

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communication received, he appeared for admission before the Dean, Medical College, Raipur on 6-8-2004, but the Dean, Medical College, Raipur, refused to give admission against disabled/handicapped class on the ground that the seat is for unreserved category disabled class candidate whereas, the petitioner appeared in the said P.M.T. examination as O.B.C. candidate. Further he had secured only 49.33% marks in the 10+2 qualifying examination, therefore, he was not eligible to appear in the said P.M.T. Examination as unreserved category candidate for which the minimum percentage was 50%. The petitioner's case is that it is true that as per the P.M.T. rules, an unreserved category candidate who had secured 50% marks in the qualifying examination was eligible to appear in the P.M.T. Examination, whereas, S.C./S.T. and O.B.C. candidates who had secured 40% marks in the qualifying examination were eligible to appear in the P.M.T. examination. But, once a candidate appeared in the said P.M.T. examination whether under the unreserved category quota or SC/ST or O.B.C. quota their merit is to be decided as per the marks secured in the P.M.T. Examination irrespective of their percentage in the qualifying examination. Therefore, the decision (Annexure-P/1) of the Dean, Medical College, Raipur is contrary to the rules and not legal. As such, he prayed that communication (Annexure-P/1) be quashed and by writ of mandamus the respondents be directed to grant admission to the petitioner as per Annexure-P/2.

(3) Return has been filed on behalf of respondents 1 to 3 in which it has been mentioned that the petitioner secured 531 marks out of 900 in the P.M.T. examination and his rank was 230th. It has further been mentioned that last date for submission of the application form for appearing in P.M.T. examination was 24-4-2004 and till that time there was no separate quota for handicapped persons. However, vide amendment inserted on 5th May 2004 in Rule 4(5) definition was amended so as to include handicapped as a Class in addition to Sainik, etc., and that amendment further conferred benefit of horizontal reservation to the handicapped persons by suitably amending Rule 4(5) to the extent of 3% vide notification Annexure-R/1 and schedule is

Annexure-R/2. As per Annexure-R/2 total seats as well as details of seats allotted for admission on the basis of All India quota as well as Central Government nominees and free P.M.T. seats available for admission through P.M.T. had been shown. Schedule also gives break up of vertical as well as horizontal reservation. As per the schedule, 11 seats were reserved for O.B.C. category and by virtue of the amendments introduced by Annexure-R/1, handicapped class was given only 3% vertical reservation that 3% of 11 seats counts to 0.33% less than half, therefore, no separate horizontal reservation for handicapped persons of O.B.C. was made. Copy of the table of seats available of different categories and classes as per vertical reservation as well as horizontal reservation as amended by Annexure-R/1 is Annexure-R/3 which clearly demonstrates that the amendment introduced vide Annexure-R/1 could confer tangible benefits only to handicapped class belonging to unreserved category and S.T. category who were given that benefit.

(4) The candidate who had secured less than 50% marks in the Higher Secondary Examination could appear in the P.M.T. examination only if he belonged to any of the reserved categories. The petitioner had secured 49.33% marks, which is less than 50% in the Higher Secondary Examination, therefore, he was eligible to appear in the P.M.T. examination as an O.B.C. candidate. Now, the petitioner cannot be allowed to take any benefit of horizontal reservation which is meant for unreserved category. The very fact for the petitioner's eligibility to appear in the P.M.T. examination depends upon the fact that he belongs to O.B.C. category disentitles him to claim benefit of horizontal reservation meant for the unreserved seats. The respondent No.4 herein has been given admission against unreserved handicapped class seat even though he secured less marks than the petitioner herein in the P.M.T. examination, therefore, the petition of the petitioner be dismissed.

(5) I have heard Mr. Kanak Tiwari, learned counsel for the petitioner and Mr. Prashant Mishra, Additional Advocate General with Mr. N. K. Agrawal, Deputy Advocate General for the State/respondents 1 to 3.

(6) Mr. Kanak Tiwari, learned counsel for the petitioner submitted that as per the rules the reserved category candidates i.e. SC/ST and OBC reserved categories candidates were eligible to appear in the P.M.T. examination if they had secured 40% or above marks in the qualifying examination. But unreserved category candidates were eligible to appear in the said examination if they had secured 50% or more marks in the qualifying examination. He further submitted that this percentage was fixed as eligibility criteria for appearing in the P.M.T. examination, 2004. But, as far as merit for admission is concerned, that was to be determined as per the marks secured by each candidate in the P.M.T. examination irrespective of the fact that he appeared as a reserved category or unreserved category candidate. In other way, reserved category candidate who appeared in the P.M.T. examination having less than 50% marks in the qualifying examination, but had secured more marks than unreserved category candidate in the P.M.T. examination was entitled for admission against unreserved category seats. He further submitted that unreserved category seats are meant for all categories, therefore, all categories candidates were entitled to seek admission against unreserved category seats if they had secured merit position for admission against unreserved category seats. In other words, if a reserved category candidate had secured more marks in the P.M.T. examination and his rank comes within the unreserved category seats, then he was entitled for admission against unreserved category seats, therefore, he cannot be counted against the reserved category seats. As the petitioner secured more marks than respondent No.4 who was unreserved category candidate, therefore, the petitioner was entitled for admission against handicapped class seat meant for unreserved category as against respondent No.4 whose rank was lower than the petitioner in the handicapped class.

(7) On the other hand, Mr. Prashant Mishra, Additional Advocate General and Mr. Agrawal Deputy Advocate General argued that the argument advanced by learned counsel for the petitioner to the certain extent is correct, but the same principle cannot be allowed for admission against class seats which are reserved in unreserved category on horizontal basis. An O.B.C. or SC/ST handicapped candidate cannot be allowed to seek admission against a handicapped seat of unreserved category reserved on horizontal basis even if the reserved category candidate might have secured more marks than unreserved handicapped candidate.

(8) Having heard learned counsel for the parties, I have perused the relevant rules and records. It is true that at the time of inviting applications for P.M.T. examination, 2004, there was no provision for the disabled/handicapped candidates. This provision was inserted vide Annexure-R/1 on 5-5-2004 by inserting the amendment in sub-Rule (3) of rule-2, sub-rule (7) of rule 2, sub-rule 5 of rule 4, sub-rule (6) of rule 4 and sub-rule (7) of rule 4. By this amendment 3% seats were reserved for disabled candidates and the schedule for various categories was also amended. As per Annexures R/2 & R/3 out of 42 unreserved seats, one seat was reserved for handicapped persons and one seat for ST handicapped candidate was reserved on horizontal basis. As the number of seats for O.B.C. were 11 and for S.C. were 12, therefore, no reservation for the handicapped class candidate of these categories was made, as 3% of their category seats was less than half seat. In this connection, if we read sub-rule (5) of rule 4 which lays down that all category seats which are to be filled by the examination will have 3% reservation for Sanik cadre, 3% for the Freedom Fighters and 30% for the female cadre. By the amendment dated 5-5-2004 3% seats against each category were reserved for handicapped class. Sub-rule (8) prescribes that a candidate shall be entitled to seek admission in anyone out of reserved category or class against one out of reserved category or class. Therefore, as per sub-rule (5) of rule 4, 3% handicapped candidates of each category were entitled for admission. But, the case of respondents is that since the

seats meant for SC and OBC were 11 & 12 and 3% of the same was less than half, therefore, no separate reservation for handicapped category of these categories was made and one seat was reserved for handicapped persons in the unreserved category and one seat was reserved in the S.T. category. In my opinion, the basis of reservation in not making any provision for SC and OBC categories itself was violative of Article 14 of the Constitution of India for the reason that even though 3% reservation under each category was prescribed for handicapped persons, but the handicapped candidates of SC and OBC were denied admissions against handicapped cadre for no reasonable cause being contrary to the spirit of rule 4(5) of the rules. At least the handicapped candidates of these categories ought to have been considered for admission against unreserved handicapped quota seat, of course, subject to their position in the merit list of handicapped candidates.

(9) In this connection, if we look into the rule 5 which envisages the selection process and the second part of sub-rule (2) of rule 5 prescribes that the merit list will be prepared on the basis of marks obtained in Chemistry, Physics, Zoology and Botany. In the merit list, roll number, name, cadre and category along with the total number secured by the candidates were to be mentioned. The merit list was to be prepared category-wise. However, while preparing the unreserved category list, names of the unreserved category as well as reserved category candidates were to be mentioned in the chronological order on the basis of marks obtained by each candidate. Therefore, second part of sub-rule (2) of rule 5 of the rules clearly lays down that even the reserved category candidates were entitled to have their position in the unreserved category list provided their ranks come within unreserved category seats on the basis of marks secured by them in the P.M.T. examination. In other words, unreserved category list was to be prepared on the basis of marks secured by candidates irrespective of their category. Even the reserved category candidates were entitled to be ranked in the unreserved category seats provided they secured their position in the unreserved category seats on the basis of marks obtained by them. This

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further indicates that unreserved category seats were available to all the candidates on the basis of their merit irrespective of the category they belonged and out of these unreserved category seats, one seat was reserved on horizontal basis for the handicapped class candidate, therefore, applying the same formula the petitioner herein even though appeared as an O.B.C. candidate, but being a handicapped candidate, was entitled for the handicapped seat reserved under the unreserved category seats on the basis of his merit.

(10) It is admitted position that the petitioner had secured more marks than respondent No.4 who appeared as an unreserved category candidate, therefore, I do not find any substance in the arguments of learned counsel for respondents that the petitioner appeared as an O.B.C. candidate and having less than 50% marks in the qualifying examination was not entitled for admission against unreserved category handicapped class seat. This part-2 of sub-rule (2) of rule 5 is the answer to the arguments of learned counsel for the respondents that irrespective of the fact that SC/ST and OBC candidate was eligible to appear in the examination on the basis of 40% or more marks secured by him in the qualifying examination, but while preparing the merit list, he was entitled to have his rank in the merit list on the basis of marks secured in the P.M.T. examination. The rule making authority has not made any distinction on the basis of marks obtained by each candidate in the qualifying examination. As mentioned above, when 3% reservation of handicapped candidates of categories was to be made as per sub-rule (5) of rule 4, then handicapped candidates belonging to SC and OBC for whom no separate reservation was made in their category cannot be denied admission if anyone had secured more marks than a handicapped candidate of unreserved category. Therefore, the communication (Annexure-P/1) issued by respondent No.3 being contra to the P.M.T. rules deserves to be quashed and the decision of respondent No.3 giving admission to respondent No.4 as against the petitioner in spite of the fact that the petitioner secured more marks in comparison to respondent No.4 is also illegal.

(11) In the result, the petition of the petitioner is allowed. Even though the last date for admission i.e. 30th September 2004 has passed, but in view of the decision of the Hon'ble Apex Court in the matter of **HARISH VERMA AND OTHERS Versus AJAY SRIVASTAVA AND ANOTHER** reported in **(2003) 8 SUPREME COURT CASES 69**, para-21, the respondents are directed to consider the petitioner for admission against the handicapped quota seat reserved in unreserved category seats.

(12) No order as to the costs.

Sd/-
L.C. Bhadoo
Judge

18th -10-2004

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